
(1993) 02 AHC CK 0070

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 15376 and 15377 of 1983

Chameli Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-02-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 17(1A), 17(2), 17(4)

Citation : (1993) 2 AWC 1066

Hon'ble Judges : V.K. Khanna, J;S.R. Singh, J

Bench : Division Bench

Advocate : Virendra Singh, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—In these two connected writ petitions the land of the Petitioners has been acquired under a common notification issued under Sections 4 and 6 of the and Acquisition Act, Learned Counsel for the parties have prayed that these two oases may be taken together as the questions of law involved in both the cases are common These two writ petitions ere thus being disposed of by a common judgment.

2. According to the Petitioners of writ petition No. 13377 of 1983 they are co-bhumidhars and in possession of plot No. 16 area 5 bighas 6 biswas 14 biswansis situate in village Bairam Nagar, Pargana Nahtaur Tahsil Dhampur district Bijnor. According to them on a portion of this plot the Petitioners" pucca residential house exists for the last 20 years in which the Petitioners and their family members are living. A tube well also exists on the plot in dispute. According to the Petitioners they lave planted a grove over a portion of the plot which has about 150 mango, guava, papaya, Aadoo trees, Banana and other fruit bearing trees.

3. The State Government had taken a decision to acquire land for rural housing and in that connection the Tahsildar had made a report on 3-8-1979 that it was

necessary to acquire 2 bighas 5 biswas land of plot No. 16 m of the Petitioners. According to the Petitioners even though proposal for acquisition had been made by the Tahsildar on 3-8-1979, the notifications u/s 4 of the Land Acquisition Act (hereinafter described as the "Act") dated 30-4-1983 was published for the first time in the U.P. Gazette dated 23-7-1983 and the notification u/s 6 of the Act dated 31-5-1983 was also published in the U.P. Gazette on 23-7-1983. From the notification u/s 4 of the Act it was clear that the provisions of Section 17 (1) and (1-A) of the Act had been applied and the provisions of Section 5-A have been dispensed with. According to the Petitioners there was no urgency for acquisition of the Petitioners' land as the State Government had decided in June 1979 for acquiring the land and the Tahsildar had made a report on 3-8-1979 but the Government slept over the matter for about four years and has illegally dispensed with the requirement of provisions of Section 5-A of the Act.

4. It was also urged that the Petitioners' pucca residential houses are situated in the land in question and that the Petitioners and their family members are living and a tube well also exists over the same and the enquiry u/s 5-A of the Act could not legally be dispensed with and the impugned notifications are illegal as the plot could not be considered to be waste and as able land and cannot be acquired under the Impugned notification.

5. As far as writ petition No. 15376 of 1983 is concerned, the Petitioner Paltu Singh alleged himself to be the Bhumidhar in possession of plot No. 197 area 2 Bigha 4 Biswas 10 biswansis situate in village Mohan-madpur Sultan district Bijnor. Out of this plot 1 bigha 4 biswas 10 biswansi of land of the Petitioner has been acquired under the impugned notification. Similar grounds have been alleged for challenging the notification as in writ petition No. 15377 of 1983, though the Petitioner in this writ petition has not alleged that there is any Abadi or grove of the Petitioner over the land acquired.

6. Counter affidavits practically on similar lines have been filed in these two writ petitions. In so far as writ petition No. 15377 of 1983 is concerned, it has been specifically stated in paragraph 3 of the counter affidavits that the Petitioners 1 and 3 are the co-tenure holders of 5 Bighas 6 Biswas 14 dhurs of plot No. 16 m. which is entered as plot No. 16/2 in Khasra extracts. Petitioner No. 2 is the tenure holder of 2 bighas 9 biswas 10 dhurs of lot No. 16 m which is recorded as plot No. 16/1 in the Khasra 15 Biswas from plot No. 16m of which the Petitioners 1 and 3 are co-tenure holders has been acquired and 1 Bigha 10 biswas of plot No. 16m has been acquired from the land of Petitioner No. 2. The possession of the aforesaid area of land has been taken by the Respondents on 29-9-1983. A photostat copy of the Dakhalnama has been filed as Annexure C.A.I. So far as the averments made by the Petitioners that they are not possessed of any other land except the land which has been acquired is concerned. It has been stated that the Petitioners 1 and 3 are in possession of 14 Bighas 13 biswas 18 biswansis of land and the Petitioner No. 2 is in possession of 3 Bigha 12 biswas 17 biswansis of land after the aforesaid acquisition. It is Important to note that

a categorical averment has been made in paragraph 3 of the counter affidavit that the house, tube-well and the trees of the Petitioners are not situate over the area of land which has been acquired and the allegations made by the Petitioners to the contrary are denied.

7. On the question of urgency in paragraph 8 of the counter affidavit It has been stated that there was urgency for providing land to the landless Harijans for building their houses and the amount allotted for that purpose during the current financial year was also to be utilised. It was stated that the Government of Uttar Pradesh considered every aspect of the matter and being of the opinion that it was a matter of urgency applied the provisions of Section 17(1)(a) of the Act.

8. Learned Counsel for the Petitioner has first urged that the land was not waste and arable and the residential house, grove etc of the Petitioners was existing on the plot in dispute, the same should not have been acquired and in any view of the matter the provisions of Section 17(1)(1-A) of the Act dispensing the provisions of Section 5-A of the Act could not have been applied.

9. So far as the aforesaid argument is concerned, as has been noticed by us, in paragraph 3 of the counter affidavit It has been clearly stated that the land of the Petitioners in Writ, petition No. 15377 of 1983, which has been acquired does not consist of the house, tube well and the trees of the Petitioners. From the aforesaid averment it is, therefore, clear that the house, tube well and the trees of the Petitioners are not being affected by the acquisition. It is only the vacant land of the Petitioner which has been acquired under the notification it may be Petitioner are note that in Section 17, after Sub-section (1) of Section 17 the following new sub-paragraph (1-A) has been inserted:

(1-A) The power to take possession under Sub-section (1) may also be exercised in th e case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development.

(Emphasis provided)

By the same amending Act substitution has also been made in Section 17(4) in so far It is applicable in the state of Uttar Pradesh, Section 17(4) In the State of Uttar Pradesh after amendment reads as follows:

17 (4) : In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (1-A) or Sub-section (2) are applicable, the Appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if It does so direct, a declaration may be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4, Sub-section (1).

It is, therefore, clear that so far as the provisions of the Land Acquisition Act are concerned, the provisions of Section 5-A of the Act could be dispensed with by the State Government in view of the addition of Section 17(1-A) of the Land Acquisition Act by the U.P. Amendment even in the case of other that waste or

arable land.

10. Learned Counsel for the Petitioner has then urged that the proposal for acquisition of the land had been made by the Tahsildar on 3-8-1979 but the notification u/s 4 of the Act was published for the first time in the U.P. Gazette dated 23-7-1983. It has been urged that there was no urgency for acquisition of the Petitioners' land as the Government itself slept over the matter for about 4 years. A mere perusal of the notification acquiring the land would show that the land was being acquired for free allotment of house sites to landless agricultural labourers of scheduled caste/tribes, village artisans etc. in the aforesaid villages of district Bijpur. In *Kasireddy Papaiah v. Government of Andhra Pradesh* AIR 1975 AP 269 Chhinnappa Reddy J. speaking for the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus:

That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in discharging of their duties, unless of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontifical pronouncements. But I am at great pains to point out that provisions for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act can not be said to be improper, in the absence of mala fides, merely because of the delay on the part of some Government officials.

The aforesaid decision given by Chhinnappa Reddy has been approved by the Supreme Court in the case of *State of U.P. v. Smt. Shrimati Pista Devi* AIR 1986 SC 2023.

11. It is therefore, clear that for the purpose for which the land was being acquired the court can take judicial notice of the fact that in such cases the urgency clause could be invoked by the Government looking to the urgency in the matter of providing house sites to the landless agricultural labourers of scheduled caste/tribes, village artisans etc. It has not been disputed before us that there has not been a post notification delay. Sections 4 and 6 notifications have been issued by the State Government in close proximity. As has been noted above, the learned Counsel for the Petitioner has strenuously urged that the provisions of Section 17 dispensing with the provisions of Section 5-A of the Act should not have been invoked, as there was pre-notification delay. The question, therefore, arises for our consideration is as to whether we can take into account

the pre-notification delay for the purposes of finding out as to whether the exercise of power u/s 17 dispensing with the provisions of Section 5-A of the Act was bad on that ground.

12. In the case of Jage Ram and Others Vs. State of Haryana and Others, , it has been held:

10...The fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the Government in a given case that there was urgency is entitled to weight if not conclusive.

13. In a later case of Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others, , it was held:

8 The other ground of attack is that if regard is had to the considerable length of time spent on inter-departmental discussion before the notification u/s 4(1) was published It would be apparent that there was no Justification for invoking the urgency clause u/s 17(4) and dispensing with the enquiry u/s 5-A, we are afraid, we can not agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition This is bound to result in a multiplicity of enquiries, communications and discussion leading to delay in the execution of even urgent projects. It is therefore, not possible to agree with the submission that mere pre-notification delay would render the invocation of the urgency provisions void We, however, wish to say nothing about post notification delay... .

In this very case the Supreme Court noticed with approval the decision of Kashi Reddy Papaiah v. State Government of Andhra Pradesh (supra) In which it was held:

Delay on the part of the tardy officials to take further action in the matter of acquisition Is not sufficient to nullify the urgency which existed at the time of the Issue of the notification and to hold that there was never any urgency.

It is thus clear that we can not take into account the delay which may have happened prior to the issue of the notification u/s 4 of the Land Acquisition Act, and what we have to see is as to whether at the time of the Issuance of the notification u/s 4 of the Act there was enough material before the State Government so as to invoke the provisions of Section 17(4) of the Act dispensing with the provisions of Section 5-A of the Act, As has been stated above, in the present case for the purpose for which the acquisition was being made, in view of the pronouncement of the Supreme Court in the case of State of U.P. v. Smt. Pista Devi (supra), the Supreme Court itself has approved the dispensation of the provisions of Section 5-A by invoking the provisions; of Section 17(4) of the Act. The contention raised, therefore, has no force.

14. In the end the learned Counsel for the Petitioner has tried to urge that the plots in dispute of the Petitioners, which have been acquired were the only source of livelihood and thus they could not be acquired. We are unable to accept the aforesaid contention. The decision as to which land will suit for the purpose for which the acquisition is being made lies within the domain of the State Government and this Court will not interfere with that decision of the State Government unless it is proved that the acquisition is mala fide.

15. No other point has been pressed before us.

16. For the reasons stated above the two writ petitions fall and are accordingly dismissed. The stay orders granted by this Court are vacated. Looking to the facts and circumstances of the case the parties shall bear their own costs.